

MAR 7 1978

MICHAEL RODAK, JR., CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-653

WILLIAM SWISHER, ET AL.,

*Appellants,*

v.

DONALD BRADY, ET AL.,

*Appellees.*

APPEAL FROM A UNITED STATES DISTRICT COURT OF  
THREE JUDGES FOR THE DISTRICT OF MARYLAND

## ANSWER IN OPPOSITION TO MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* IN SUPPORT OF APPELLEES

FRANCIS B. BURCH,  
Attorney General  
of Maryland,

GEORGE A. NILSON,  
Deputy Attorney General,

CLARENCE W. SHARP,  
Assistant Attorney General  
Chief, Criminal Division,

ALEXANDER L. CUMMINGS,  
Assistant Attorney General,  
One South Calvert Street,  
Baltimore, Maryland 21202,  
383-3737,

Attorneys for Appellants.

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1977

No.

WILLIAM SWISHER, ET AL.,

*Appellants,*

v.

DONALD BRADY, ET AL.,

*Appellees.*

APPEAL FROM A UNITED STATES DISTRICT COURT OF  
THREE JUDGES FOR THE DISTRICT OF MARYLAND

**ANSWER IN OPPOSITION TO MOTION FOR  
LEAVE TO FILE BRIEF *AMICUS CURIAE*  
IN SUPPORT OF APPELLEES**

Now comes the Appellants William Swisher, et al., by their attorneys, Francis B. Burch, Attorney General of Maryland, George A. Nilson, Deputy Attorney General, Clarence W. Sharp, Assistant Attorney General, Chief, Criminal Division and Alexander L. Cummings, Assistant Attorney General, and pursuant to Rules 35, 39, 40 and 42 of the Supreme Court of the United States, oppose the Motion for Leave to File Brief *Amicus Curiae* in support of Appellees' filed by the State Public Defender of California in the above captioned case and for reason says:

1. The Public Defender for the State of California, who is seeking permission of this Honorable Court to

file an *Amicus Curiae* Brief in his Motion and accompanying Brief, argues that the basic structure of the Juvenile Court law in that State resembles that of Maryland (the use of referees in Juvenile cases with the final determination made before the juvenile court judge either on the record or by a hearing *de novo*). For this reason he claims that he should be permitted to file an *amicus curiae* brief in support of the Appellees.

2. By his motion and accompanying brief, the Public Defender seeks to inject into this case constitutional issues of due process and equal protection of the law. However, as evidenced by the briefs filed by the Appellants and Appellees, the sole broad issue raised on appeal is whether the statutory and rule procedures governing the Maryland juvenile court system violate the Double Jeopardy Clause of the Fifth Amendment of the United States Constitution. Likewise, the District Court decided the case solely on this basis without resort to constitutional considerations of due process or equal protection of law.

3. To grant the motion and permit the filing of the *amicus curiae* brief would be tantamount to the presentation of new issues which were not considered by the District Court and which formed no basis for its opinion.\*

It is for these reasons that the Appellants seasonably file this answer setting forth reasons for withholding consent to the filing of the *amicus curiae* brief by the Public Defender for the State of California.

\* It should be noted that the Appellants consented to the filing of an *amicus curiae* brief by counsel representing the National Juvenile Law Center because Appellants believed that their brief was confined to issues raised and decided by the District Court.

WHEREFORE, the Appellants pray that this Honorable Court deny the Motion filed by the Public Defender for the State of California for leave to file an *amicus curiae* brief in support of Appellees.

Respectfully submitted,

FRANCIS B. BURCH,  
Attorney General  
of Maryland,

GEORGE A. NILSON,  
Deputy Attorney General,

CLARENCE W. SHARP,  
Assistant Attorney General  
Chief, Criminal Division,

ALEXANDER L. CUMMINGS,  
Assistant Attorney General,  
One South Calvert Street,  
Baltimore, Maryland 21202,  
383-3737,

Attorneys for Appellants.

### Certification

I Francis B. Burch, Attorney General of Maryland and counsel for the Appellants do hereby certify that I served by United States Mail, postage prepaid first class on this Ninth day of March 1978, three copies of the Answer in Opposition to the Motion for Leave to File *Amicus Curiae* Brief on Paul Halvonik, State Public Defender of California, 45 Capitol Mall, Suite 360, Sacramento, California 95814, attorney for *Amicus Curiae*, David Howard, National Juvenile Law Center, 3701 Lindell Blvd, St. Louis, Missouri, 63108, *Amicus Curiae* for the National Juvenile Law Center and Peter Smith, Esquire, counsel for the Appellees Maryland Juvenile Law Clinic, 500 W. Baltimore Street, Baltimore, Maryland 21201.

I further certify that all parties required to be served in this appeal have been served.

FRANCIS B. BURCH,  
Attorney General of  
Maryland.